

**NC COMMISSION FOR MENTAL HEALTH,  
DEVELOPMENTAL DISABILITIES AND  
SUBSTANCE ABUSE SERVICES**

Clarion Hotel  
320 Hillsborough Street  
Raleigh, NC

August 20, 2009

**Attending:**

**Commission Members:** John R. Corne, Dr. Richard Brunstetter, Laura C. Coker, Sandra C. DuPuy, Martha Martinat, Connie Mele, Emily Moore, Jerry Ratley, Judith Ann Dempsey, Dr. Thomas Gettelman, Nancy E. Moore, Dorothy O'Neal, Dr. Greg Olley, John Owen, Larry Pittman, Pamela Poteat, Elizabeth Ramos, Don Trobaugh, Dr. James W. Finch

**Commission Members Excused:** Norman Carter, Elizabeth MacMichael, Phillip A. Mooring, Jennifer Brobst, Carl W. Higginbotham, Ranota Thomas Hall

**Division Staff:** Leza Wainwright, Steven Hairston, Denise Baker, Marta T. Hester, Andrea Borden, Amanda Reeder, Flo Stein, Wanda Mitchell, William Bronson, Stuart Berde

**Others:** Paula Cox Fishman, Kathleen Herr, Jennifer Pritchard, Louise G. Fisher, Susan Pollitt, Laura White, Karen McLeod, Luckey Welsh, Erin McLaughlin, Ellen Russell, Theresa Edmondson, Deby Dihoff, Karen Salacki, Sally Cameron, Diane Pomper, Ann Rodriguez, Tara Fields

**Handouts:**

- Revised Agenda
- 2009-2011 Enacted Budget (Excerpts of Interest to DMH/DD/SAS)
- Broughton Hospital Tobacco Free Facility Implementation Process
- Session Law 2009-438, Senate Bill 628

**Mailed Out Packet:**

- August 20, 2009 Commission Agenda
- Draft February 19, 2009 Commission Meeting Minutes
- Draft April 15, 2009 Rules Committee Minutes
- Draft April 15, 2009 Advisory Committee Minutes
- August 20, 2009 Commission Meeting Information
  - Proposed Amendment of 10A NCAC 27G .1903 – Operations (Psychiatric Residential Treatment for Children and Adolescents (PRTF))
  - Proposed Amendment of 10A NCAC 26F .0103 & .0106 – Schedules of Controlled Substances
  - Proposed Amendment of 10A NCAC 27G .0810, .0811 & .0812 – Panel Appeals Procedures
  - Proposed Adoption of 10A NCAC 27A .0500 – Uniform Co-Payment Schedule

**Call to Order**

John R. Corne, Commission Chairman, called the meeting to order at 9:37 am. He then welcomed new members and asked for introductions from the Commission. Chairman Corne asked if new

members had received their letters from the North Carolina State Ethics Commission approving their disclosures, and whether they had been sworn in. He also issued the ethics reminder.

### **Approval of Minutes**

*Upon motion, second, and unanimous vote, the Commission approved the minutes of the February 19, 2009 Commission meeting.*

### **Chairman's Report**

Chairman Corne advised that there would not be a Chairman's Report.

### **Director's Report**

Leza Wainwright, Director, NC Division of Mental Health, Developmental Disabilities and Substance Abuse Services (NC DMH/DD/SAS), discussed organizational changes and introduced Luckey Welsh, Director, NC Division of State Operated Healthcare Facilities (DSOHF). Mr. Welsh spoke briefly and advised that he was open to any questions and concerns from the NC Commission for Mental Health, Developmental Disabilities and Substance Abuse Services.

Ms. Wainwright proceeded to review the handout on *Excerpts of Interest to DMH/DD/SAS* on the 2009-2011 budget, which included:

- DMH/DD/SAS Central Office Reduction
- Western and Central Maintenance (Facilities)
- Close 25 beds each – Broughton and Cherry
  - Ms. Wainwright noted that 102 positions would also be lost
- Increase receipts at ADATCs
- Eliminate Vacant Positions
- Federal Funds Payback at Broughton
- Eliminate All Continuation Increases
- Reduce LME System Management
- Reduce Central Office Contracts
- Reduce State Funds Supplementing CAP-MR/DD
- Reduce Community Service Funds
- Non-Core State Operated Services
- Non-Core Community Services
- State Operated Services Purchasing Savings
- Reduce Level III and IV Group Homes
  - Ms. Wainwright advised that while children will still receive services in these facilities, a special provision put limits in place.
- Complete Elimination of Community Support (by June 30, 2010)
  - Ms. Wainwright added that the Paraprofessional level of community support would be eliminated and that a definition for Peer Support would be submitted to the Centers for Medicare and Medicaid Services (CMS) for approval.
- Consolidate Case Management Services
  - Ms. Wainwright advised that this affects all of the NC Department of Health and Human Services.
- Funds for Local Hospital Psychiatric Inpatient
  - Ms. Wainwright noted that this was \$12,000,000 in new money to continue contracting with community hospitals for inpatient beds.

**Ms. Wainwright provided the following information in response to questions and comments from the Commission:**

- The \$1.7 million reduction in billing outlined in the budget is related to the requirement that all providers be prepared to bill and receive payment electronically by September 1<sup>st</sup>.
- There is a requirement that law enforcement continue to retain custody of someone under an involuntary commitment order until he/she is admitted to a 24-hour facility. The Division has to make sure that an individual admitted to one of the state facilities can be served both appropriately and safely.
- The statute is very clear about who can do an examination to order a commitment. There is a pilot project underway that expands the licensure category of individuals permitted to do this.
- Efforts are underway to train law enforcement officers so they feel better equipped to respond to individuals in crisis and therefore less inclined to simply take someone to jail. This is a priority on the agenda during meetings with the Sheriffs Association.
- A workgroup is attempting to identify gaps which will be created by the elimination of community support services. A new service definition is being created to address those gaps. Once written, the service definition must be approved by the Centers for Medicare and Medicaid Services in order to be Medicaid billable; this process is usually nine months in duration.
- There is a very strong effort to connect with general practitioners; one of the initiatives being addressed is integrating physical health and behavioral health.
- Funds for local hospital psychiatric inpatient beds can be either psychiatric or substance abuse; however, these are inpatient beds in a community hospital.
- While it is possible the new service definition will not be in place before the 90 day discharge plans are required for community support services, Local Management Entities (LMEs) are being asked to triage their community support provider and inquire regarding the provider's plans for discharging consumers. Children could continue to receive services pursuant to the Early Periodic Screening, Discharge, and Treatment (EPSDT) requirements.
- A return of case management functions to the LME is not an option that is being considered. A workgroup has spent time trying to distinguish between case management and care management with the thinking being that care management is an administrative function.

**Chairman Corne made the following announcements:**

- New members need to complete the ethics training and existing members need to update their file.
- Anna Scheyett has resigned from the Commission stating that her duties at the university would conflict with her continued membership on the Commission.
- Jerry Ratley has been asked to serve as the Chairman of the Rules Committee.
- Dr. Marvin Swartz's term has expired and that he has indicated that his duties would interfere with him continuing to serve as Chair of the Advisory Committee.
- Approval is needed to convene the Rules and Advisory Committee meetings due to budgetary funding issues.
- The legislature has given the Commission authority to adopt rules for electronic surveillance in certain facilities and as well as rules for Traumatic Brain Injury.

Mr. John Owen, Commission member, asked if there was the capacity to have meetings via teleconference to keep costs down. Chairman Corne stated teleconferences, while a viable alternative, are more difficult for a large number of people.

#### **Advisory and Rules Committee Reports**

Chairman Corne referred the Commission members to the Rules and Advisory Committee minutes in the packet for the report on each committee.

Chairman Corne asked the Commission members to review and consider the proposed 2010 meeting schedule; however, the members did not vote on the schedule. He then entertained a motion for the selection of a Vice Chairman for the Commission. Dr. Richard Brunstetter nominated Dr. Greg Olley.

*Upon motion, second, and majority vote, the Commission approved the appointment of Dr. Greg Olley as Vice Chairman of the Commission.*

#### **Secretary's Report**

Secretary Lanier M. Cansler, NC Department of Health and Human Services (DHHS), addressed the Commission by advising what Governor Perdue asked him to do as Secretary of NC DHHS, what he wanted to during his tenure, and by providing background information on his professional work history. Secretary Cansler noted that one priority is to reestablish confidence in the agency among the citizens and within the Department itself noting that this confidence is critical in the area of mental health reform.

Secretary Cansler noted that, unfortunately, divestitures of the area programs resulted in a greater demand of services from the facilities before the facilities were prepared to meet the demand. He added that, while the budget would make the job more difficult, the job is not impossible.

Secretary Cansler stated that beyond those cuts in mental health, there were substantial cuts in Medicaid. He noted that a reduction in Medicaid appropriations results in an actual reduction that is three to three and a half times that. From the General Assembly's perspective, these reductions are all effective September 1<sup>st</sup>.

Secretary Cansler stated that he selected Luckey Welsh as Director of State Operated Healthcare Facilities because he wanted to ensure real fiscal management in the facilities. Secretary Cansler stated that the agency is taking a tougher approach with respect to abuse and neglect, and the Department is creating a strategic plan on how to get there. The recent reductions in positions for the facilities were positions that the facilities themselves determined would not impact safety and quality of care. He also stated that there is an attempt to limit the number of temporary employees in the facilities. The new Director at Cherry Hospital has been successful in transforming about 15 – 18 temporary nurses into full-time employees. This helps facilitate a greater commitment to the patients at the facility and to the facility itself.

Secretary Cansler stated that an additional \$12 million had been received to continue efforts to contract for crisis beds in communities. Secretary Cansler noted that this is important because about 40% of people admitted into our hospitals have a stay of less than seven days. He added that if the Department can get the crisis beds in the community quality of care is greatly enhanced; an individual in crisis can go into that crisis bed in the community and have the same provider and same people caring for him/her upon discharge. The ultimate goal is for patients to be hospitalized locally with the exception of those that are violent or too dangerous to be admitted locally. If the local communities have greater ability to handle short term patients that can be

easily stabilized and cared for in the community it should provide greater flexibility to deal with more chronic patients. Secretary Cansler mentioned that the Department did receive an additional \$6 million non-recurring funds to partner with Wake County and continue operating 60 beds as an overflow unit on the Dix Campus. Part of the forensic population will remain housed at Dorothea Dix Hospital for a period of time.

Secretary Cansler stated that it is very important to clearly identify the responsibilities of Local Management Entities (LMEs). The Department is also reviewing the waiver program that has been successfully implemented in the Piedmont LME and considering how it might be used successfully in other areas of the state. The Department will also focus more on coordination of care among its Divisions by coordinating and leveraging resources.

Secretary Cansler stated that he was looking forward to having a close relationship with the Commission and having the opportunity to attend Commission meetings periodically to facilitate sharing of ideas and information.

**Secretary Cansler responded as follows to questions and comments from the Commission:**

- The Attorney's General office and the Department's legal counsel are working on efforts to try and recoup money (tens of millions) overpaid to providers; the majority of these funds relate to the community support services.
- Efforts are underway to work with providers and incentivize them to begin using electronic medical records to improve capacity to exchange information.
- Rates are being negotiated with the hospitals; he is not aware of anyone being paid on a per day basis at this time.
- Secretary Cansler plans to name an Assistant Secretary for Mental Health Services Development, with the sole purpose of focusing on working with the LMEs and working in the communities to develop those services.

**Presentation and Update on Pilot Program to Prevent Smoking in State Mental Health Operated Facilities**

Thomas Mahle, Director, Broughton Hospital, presented the update on the pilot program to prevent smoking. Mr. Mahle also introduced Jennifer Pritchard, Director of Staff Development at Broughton Hospital. Mr. Mahle stated that their goal is to have the hospital be smoke free October 1<sup>st</sup>.

Ms. Pritchard reviewed the handout on *Broughton Hospital Tobacco Free Facility Implementation Process*. Ms. Pritchard stated that they had alerted all staff and patients that the program is being implemented. The NC Prevention Partners will specially train the physicians, physicians' assistant, and nurses in the assessment and treatment of patients who have nicotine dependency. Once the training has been completed, the programs will be implemented in the psycho-social intervention groups.

**Following the presentation, Mr. Mahle and Ms. Pritchard responded as follows to questions and comments from the Commission:**

- There is a hands-on self-developing plan to assist a heavy smoker in becoming smoke-free.
- Staff will not be allowed to smoke on campus.
- A report should be available for the Commission within six months from October.
- The average length of stay on the acute unit was 23 days last month.

- Club houses reportedly exist in the community; these are able to provide the same kind of counseling.
- A pre-ban survey was conducted in June: 42% said that they were in agreement with a smoke-free facility; patient response was 50/50 when they were asked if it was a good or bad idea for the hospital to go smoke-free.
- Patients allowed grounds privileges today will continue to have that opportunity.
- Attempts will be made to track patients as much as possible; however, the outcome will depend on the number of patients that return surveys after being discharged.
- Counseling and the psycho- social intervention group will be available in addition to smoking cessation patches.
- Dr. James Finch, Commission member, indicated that testing for nicotine in the urine is the most commonly used screen.

Laura White, NC Division of State Operated Health Care Facilities, addressed the Commission. She noted that, in working on the Broughton study, significant differences exist between that setting and the Alcohol and Drug Abuse Treatment Centers (ADATC). Ms. White stated that they had talked to Chairman Corne about replicating the same pilot in an ADATC so that they can get the same kind of information that was discussed today.

**Proposed Amendment of 10A NCAC 27G .1903 – PRTF (Psychiatric Residential Treatment for Children and Adolescents)**

Flo Stein, Chief, Community Policy Management, NC DMH/DD/SAS, presented the proposed amendment of 10A NCAC 27G .1903 – PRTF. This amendment will allow PRTFs to serve up to 18 children or adolescents. As the residential structure of child and adolescent programs in North Carolina changes, the ability to increase capacity in this medically directed setting will become an expanded component of the treatment continuum for child and adolescent services.

**Ms. Stein responded as follows to questions and comments from the Commission:**

- Authorization for this service is 14 days with the option of reauthorization for up to 30 days. These facilities are not intended for long-term stays. Leza Wainwright stated that the Division receives more request for waivers of this particular rule. This is a very expensive service that is physician directed. It is a service that is just for kids, is highly regulated, and has special requirements in the federal code of regulations.
- Facilities will have to meet the requirement of two staff members for every six patients.
- Different facilities have different configurations which is why the Division has always received a floor plan with the waiver request showing them the nursing stations, bedrooms, etc. This particular service is subject to institutional building codes with sprinklers, etc. The facilities are licensed by the Division of Health Service Regulation and must meet minimum square footage per person requirements. They would not be licensed for 18 if the facility was not adequate to meet that size.

*Upon motion, second and unanimous vote, the Commission approved the proposed amendment of Rule 10A NCAC 27G .1903 – PRTF to be published for public comment.*

**Proposed Amendment of 10A NCAC 26F .0103 & .0106 –Scheduling of Controlled Substances**

William Bronson, Program Manager, Drug Control Unit, NC DMH/DD/SAS, presented the proposed amendment of 10A NCAC 26F .0103 & .0106 – Schedules of Controlled Substances. It is proposed that the rules be amended to include two substances that have been recently classified by the Federal Government. They are as follows: 1) Lacosamide added to schedule V; and 2)

Tapentadol and its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers added to schedule II.

The reasons for federal scheduling of these substances are summarized as follows:

- Tapentadol is a new molecular entity with centrally acting analgesic properties. It shares substantial pharmacological effects and abuse potential with other schedule II opioid analgesics. It currently has an accepted medical use within the United States. It has a high potential for abuse. Abuse may lead to severe psychological or physical dependence. Accordingly it was placed into Schedule II effective June 22, 2009.
- Lacosamide: Under the trade name Vimpat® is used as an adjunct in the treatment of partial onset seizures in patients with epilepsy ages 17 and older. It currently has an accepted medical use in the United States. It has lower potential for abuse than other substances found in schedule IV. Abuse may lead to limited physical or psychological dependence. Accordingly, Lacosamide was placed into Schedule V effective June 22, 2009.

***Upon motion, second and unanimous vote, the Commission approved the amendment of Rules 10A NCAC 26F .0103 & .0106 Scheduling of Controlled Substances.***

Mr. Bronson also commented on the recent passage of Session Law 2009-438, Senate Bill 628, which relates to the controlled substances reporting system and gives medical examiners access to the controlled substance reporting system. The Session Law changed the requirement that pharmacies report to this system from twice a month to weekly. Rule 10A NCAC 26E .0603 specifies that pharmacies or dispensers must report into the system on the 15<sup>th</sup> and 30<sup>th</sup> of each month. This rule is now in conflict with the recent Session Law; it will be presented to the Commission in November for amendment.

#### **Proposed Amendment of 10A NCAC 27G .0810, .0811 & .0812 – Panel Appeals Procedures**

W. Denise Baker, Team Leader, Division Affairs Team, NC DMH/DD/SAS, presented the proposed amendment of 10A NCAC 27G .0810, .0811 & .0812. The proposed amendments further clarify the Administrative Review and Hearing Procedures involved in processing appeals to the State MH/DD/SA Appeals Panel. The proposed amendments also clarify the timeframes involved. This is a Secretary rule presented to the Commission for information and comment.

**Ms. Baker responded as follows to questions and comments from the Commission:**

- This is not a sitting panel; as such, one of the concerns is the consistency of decisions. However, there is a hearing officer who works with the panel to ensure its members are familiar with the rules and regulations governing the procedures.
- Until recently, the Division probably received less than one panel appeal per year; however, there has been a recent increase in the number filed. The parties do have the capacity to identify representatives; several attorneys have participated in the process.

#### **Other Business**

Chairman Corne discussed the status of the criminal justice rules.

***Upon motion, second and unanimous vote, the Commission approved the staff to work on redrafting the Criminal Justice Rules.***

Chairman Corne stated that he had asked Larry Pittman to be Chairman of the Advisory Committee and he has agreed. Chairman Corne also stated that he was considering appointing a co-chair to the Advisory Committee.

**Public Comment Period**

Deby Dihoff, National Alliance on Mental Illness in NC, asked if there is a plan to move forward with the revisions to the client rights rule. They were originally turned down at the Rules Review Commission for lack of authority and now there is the authority in the statute for those rules. Ms. Wainwright stated that they would.

Louise Fisher, volunteer advocate for the mentally ill, invited the Commission members and any other interested individuals to participate in the Annual Walk for Hope (October 11, 2009). The walk raises money for research and treatment of mental illness.

Kathleen Herr, student intern with Disability Rights of North Carolina, gave the Commission some background information on PRTFs based upon her review of information.

Paula Cox Fishman, volunteer advocate for the mentally ill, encouraged the Commission to pick individuals who have previously worked on the client rights rule, instead of convening a new committee to address this issue.

Susan Pollitt, Attorney, Disability Rights of North Carolina, expressed opposition to the proposed changes of rule 10A NCAC 27G .1903 – PRTF. Ms. Pollitt also stated that it would be best practice to allow facilities to continue to receive waivers, rather than changing the rule to serve more than 12 clients.

**There being no further business the meeting adjourned at 2:55 pm**